1952 K File No. Prohibition I/52 (N)

Legal Dept

B BRANCH

Subject:— Notifications under the Bombay Prohibition Act 1949.

File No. Prohibition II/52 (N)

Gen. 194 e.

239-B.

Legal Department.

A revised draft order in place of R.D. draft is sent herewith.

2. The proposal of the Director of Excise and Prohibition is not to remit the fees in respect of all quantity transported within the state of Bombay by Tourists on board the S.S. 'Caronia' but only in respect of the quantity at the rate of one unit per Tourist (which is the quantity permissible for a week's stay in the Bombay State). It will, therefore, be necessary to define "unit" in the notification as that term has notbeen defined in the Bombay Prohibition Act, 1949. The Revenue Department may define "unit" in consultation with the Director of Excise and Prohibition.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R. to R.D.,No.1408, dated the 29th January 1952.

RHB.
2.7.

Legal Department.

A revised draft in place of the Revenue Department draft is sent herewith subject to the following observations:-

In the Revenue Department draft in column 3, the place of sitting of the medical board mentioned in column 2 has been specified. The Revenue Department has, however, proposed separately the amendment of the Bombay Foreign Liquor Rules, 1950, so as to empower the Government to appoint the place of sitting of the area medical boards established under section 8 of the Act (vide rule 64 (1B) of the rules proposed to be amended, the draft of which has been supplied under R.L.A.'s No. 4577, dated the 26th March 1952). These rules should therefore be finally published simultaneously with the constitution of the area medical boards.

2. The functions to be performed by the area medical board have been provided for in rule 64 of the Bombay Foreign Liquor Rules as proposed to be amended. It is not, therefore, necessary to specify the functions of the medical board in the notification proposed to be issued under section 8 of the Act.

3. In Revenue Department draft the area for which an Area Medical Board is contituted has been specified in column 5. But the said areas given thereunder are not clear. It is, for instance, not understood what is meant by the area "Nagpada, or Mazgaon or Byculla (West and East) or Ghorpadi, Love Lane or Sewri" shown against item 2. If it is intended to describe them in terms of municipal wards, they should be so described; but the area as given will not give any idea to the public as to theexact limits ofsuch area. Secondly, against item 50 the area for the medical board has been shown to be "Broach". It should be made clear whether by "Broach",

P.T.O.

Broach Taluka or Broach District is intended. Wherever the area is to be specified in terms of city, it should be so specified. Similarly, in the case of place of sitting, the exact location of the place of sitting should be shown. For instance, against item 5 on page 4 the place of sitting is shown as "Thana". Probably it means Thana City. Revenue Department should give the exact particulars in the Schedule in the light of the observations made above.

Id/- J.R.DHURANDHAR.

Additional Secretary to Government.

U.R.to R.D.No.6470, dated the 26th April 1952.

RHB.
2.7.

Revenue Department.

Bombay Castle, 1952.

Bombay Prohibition Act, 1949.

No. .- In exercise of the powers conferred by section 8 of the Bombay Prohibition Act, 1949 (Bom. XXV of 1949) and sub-rule (1B) of rule 64 of the Bombay Foreign Liquor Rules, 1950, the Government of Bombay is pleased to constitute Medical Boards (hereinafter referred to as "Area Medical Boards" as specified in column 1 of the Schedule annexed hereto for the areas specified against them in column 3 of the said Schedule and to direct that each of the said Area Medical Boards shall consist of the member specified against it in column 2 of the said Schedule. The Government of Bombay is further pleased to appoint the places specified in column 4 of the said Schedule as the places of sitting for the Area Medical Boards specified against them in column 1 thereof.

Schedule.

Serial No.	Name of the Area Medical Board.	Member.	Area for which constituted.	Place of sitting.
	1.	2.	3.	4.

(Here enter the particulars at pages 3 to 17 ante under the above appropriate headings).

By order of the Governor of Bombay,

Secretary to Government.

RHB.
2.7.

Legal Department.

The Revenue Department draft order at page 79 is in order.

Sub-rule (4) of rule 65 ofthe Bombay Foreign Liquor Rules, 1950, provides that no permit shall be granted for a period extending beyond the date on which the applicant's residence in India for six months expires. This sub-rule is in conformity with the Explanation in section 40 of the Bombay Prohibition Act, 1949. But since it is proposed to exempt Dr. Reckless and Dr. Galway from this Explanation, it would be desirable to exempt them also from the provisions of sub-rule (4) of rule 65. The Revenue Department draft at page 81 is accordingly amended and a revised draft in place of the Revenud Draft Order is sent herewith.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R.to R.D.No.6754, dated the 30th April 1953.

RHB.
2.7.

Revenue Department.

Bombay Castle, April 1952.

ORDER.

Bombay Prohibition Act. 1949.

No.10484/45-VIII(a). - In exercise of the powers conferred by clause (c) of section 139 of the Bombay Prohibition Act, 1949 (Bom.XXV of 1949), the Government of Bombay is pleased to exempt the persons specified in column 1 of the Schedule hereto annexed from the provisions of the said Act and the Bombay Foreign Liquor Rules, 1950, specified in column 2 of the said Schedule.

SCHEDULE

1. Persons	2. Provision of the Act
(i) Dr. Walter C. Reckless, (Official of the United Nations.)	Proviso (a-1) of clause(c of sub-section (1) of section 40 (in so far as it relates to the person who has been residing and intends to reside in India temporarily) read with the Explanation.
(ii) Dr. Edward Galway, (Official of the United Nations.)	Provisions of the Rules Sub-rule (4) of Rule 65 and the proviso to sub-rule (5) of Rule 65.

By order of Governor of Bombay,

Secretary to Government.

RHB.
2.7.

Legal Department.

Section 117 of the Bombay Prohibition Act, 1949, provides that all investigations, arrests, detention in custody andsearches shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. Sub-section (2) of section 103 of the Code of Criminal Procedure provides that the search shall be made in the presence of witnesses and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it. In a raid it is the officer who makes the panchnama and the panchas witness it. Substituting a J.P. for panchas will not advance matters; as, if called, the J.P. will have to give evidence. The mere presence and signature of a J.P. will not be considered by the Courts as conclusive of truth and fairplay as far as matters stated in the panchnama are concerned. The J.P. will have to be made available for cross-examination if required - as his testimony, as indeed any body else's, must be tested by cross-examination if necessary. The suggestion is impracticable. No change in law is necessary.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R. to H.D.,No.12052, dated the 22nd July 1952.

RHB.
2.7.

Legal Department.

The proposal of the Director of Excise and Prohibition is that only foreigners holding health permits should be allowed the concession of offering and receiving foreign liquor to and from other permit holders; and for that purpose he suggests on page 5 ante the amendment of Government Order No.9987/49, dated the 28th June 1951, as amendedby Government Order of 17th July 1951. But this proposal of the Director no longer survives the Bombay Prohibition (Amendment) Bill which has been passed by the Legislature and has been published as an Act on 22nd October 1952. Section 16 of that Amendment Act deletes clause (b) of sub-section (1) of section 40 of the Prohibition Act and the Explenation at the end of the said section 40. There would, therefore, be no question of any person holding a health permit under section 40 of the Act. No amendment of the Government Order as proposed by the Director is, therefore, necessary.

Id/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R.to R.D.,No.17677/B, dated the 24th October 1952.

RHB.
2.7.

LEGAL DEPARTMENT.

From the forwarding letter of the Director of Excise and Prohibition it appears that he proposes to get the approval of Government to a draft of the Licence for the manufacture of Indian made rectified spirit from Mohwra flowers to Messrs. Alembic Chemical Works Company Ltd. From the preamble of the draft Form of Licence however, it appears that it consists of two parts.-

(1) authorizing the Alembic Chemical Works Company to work a distillery; and

(2) authorizing it to manufacture rectified spirit at the distillery from Mohwra flowers for industrial purposes.

It is presumed that the Alembic Chemical Works Company Limited has already been given a licence for working a distillery at Baroda and it is not understood why a fresh licence for working the same distillery is now required. It should be ascertained from the Director of Excise and Prohibition whether the form of licence forwarded by him requires to be amended by deleting the reference to the working of a distillery from the form of licence as the intention does not appear to be to grant it a licence for working a distillery.

Sd/- J.R.DHURANDHAR.
Additional Secretary to Government.

U.R.to R.D.No.354/, dated the 9th August 1952.

RHB.
2.7.

Legal Department.

The proposal in this case is that Additional Police should be employed in the 10 villages in the District of Belgaum inhabited mainly by the members of the Berad community and the cost of the employment of such police should be recovered from the adult male members of the said community residing in the said villages. Section 141 of the Bombay Prohibition Act, 1949, empowers Government to direct the employment of additional police if it is satisfied that the inhabitants of any area are concerned in the commission of offences under sections 65 to 69 of the Act. Section 65 relates to illicit manufacture or distillation of an intoxicant. There is sufficient evidence on the record that the inhabitants of the ten villages in question are concerned in the commission of offences under section 65 of the Act. Sub-section (2) of section 141 provides that the cost of the additional Police can be recovered either generally from all persons who are the inhabitants of any local area or speially from any particular section or classes of pepsons. This provision, no doubt, empowers Government to impose the tax or rate on any particular section or classes of persons who are the inhabitants of the affected area. But these provisions will have to be read subject to article 15 of the Constitution. The said article does not permit any discrimination to be made on grounds on of religion, race, caste, sex or place of birth. Although, therefore, there is evidence to prove that the Berad inhabitants of the area are concerned in the commission of offences puhishable under section 65 of the Bombay Prohibition Act, the imposition of the tax on persons only on the ground that they are Berads would not be legal. So far as women and children are concerned, their exemption may be justified under clause (3) of article 15. If any other inhabitant who does not belong to the Berad community is to be exempted, he will have to be exempted by name under sub-section (5) of section 141. If the tax is to be imposed on individuals, it would not be

legal to direct that it should be recovered from the head of the family. Such a direction in theeree itself would be considered the imposition of liability of a vicarious nature.

A revised draft Government Resolution and Order are sent herewith. accordingly.

Id/- J. R. DHURANDHAR.
Additional Secretary to Government.

U.R.to H.D.No.22128/B, dated the 31st December 1962.

RHB.
2.7.